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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte MICHAEL CHRISTOPHER MARTIN,
PATRICK JAMES RICHARDS JR.,
and MATTHEW BUNKLEY TREVATHAN

_____

Appeal 2009-006444
Application 09/846,568
Technology Center 2400

_____

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and
CAROLYN D. THOMAS, *Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's

rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b). We

affirm-in-part.

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[1] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants' invention adapts to changes in demand on a web server by (1) associating "session tracking objects" with browsers that access a server, and (2) analyzing requested web page identifications and determining caching priorities based on this analysis. *See generally* Spec. 3. Claim 1 is illustrative:

1. A method for adapting to change in a demand on a web server, comprising:
associating session tracking objects with browsers that access a web server, wherein the session tracking objects include identifications of web pages requested by the browsers; and
analyzing the identifications of web pages requested by the browsers to determine caching priorities for the web server.

The Examiner relies on the following as evidence of unpatentability:

Glance	US 6,415,368 B1	July 2, 2002 (filed Dec. 22, 1999)
Klopp Lemon ("Klopp")	US 2002/0156881 A1	Oct. 24, 2002 (filed Feb. 20, 2001)
Ronald	US 2003/0041143 A1	Feb. 27, 2003 (filed Dec. 4, 2000)
Knouse	US 2003/0074580 A1	Apr. 17, 2003 (filed Mar. 21, 2003)
Asai	US 6,760,765 B1	July 6, 2004 (filed Oct. 20, 2000)
Sarukkai	US 6,775,695 B1	Aug. 10, 2004 (filed Oct. 29, 1999)

<div align="center">THE REJECTIONS</div>

1. The Examiner rejected claims 1, 4-12, 15, 16, 18, and 19[2] under 35 U.S.C. § 103(a) as unpatentable over Sarukkai and Glance. Ans. 4-6.[3]

2. The Examiner rejected claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Sarukkai, Glance, and Ronald. Ans. 7.

3. The Examiner rejected claims 13, 14, and 17 under 35 U.S.C. § 103(a) as unpatentable over Sarukkai, Glance, and Klopp. Ans. 7-8.

4. The Examiner rejected claim 20 under 35 U.S.C. § 103(a) as unpatentable over Asai, Knouse, and Glance. Ans. 8-10.

<div align="center">THE REJECTION OVER SARUKKAI AND GLANCE</div>

Regarding representative claim 1, the Examiner finds that Sarukkai discloses a method for adapting to demand changes on a web server with every recited feature except for session tracking objects to include web page identifications. The Examiner, however, cites Glance to cure this deficiency

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[2] Although the Examiner's rejection indicates that claims 1 and 4-11 were rejected, the Examiner nonetheless includes claims 12, 15, 16, 18, and 19 in the corresponding discussion. Ans. 4-6. We therefore presume that the Examiner intended to reject these claims as well. *Accord* Supp. Ans. 3 (confirming this presumption).

[3] Throughout this opinion, we refer to (1) the Appeal Brief filed August 13, 2007; (2) the Examiner's Answer mailed February 22, 2008; (3) the Reply Brief filed April 21, 2008; (4) the Supplemental Examiner's Answer mailed July 7, 2008 ("Supp. Ans."); and (5) the Supplemental Reply Brief ("Supp. Reply Br.") filed September 8, 2008. Although the Examiner's pagination of the Supplemental Answer begins with page 2 and omits page 1, we nonetheless refer to the Examiner's pagination for clarity and consistency.

in concluding the claim would have been obvious. Ans. 4-5.[4] In reaching this conclusion, the Examiner equates Sarukkai's tracing logs, cookies, or Glance's value module to the recited "session tracking objects." Ans. 10-12.

Appellants argue that Sarukkai stores the document itself in the cache based on its request probability, but does not associate session tracking objects with browsers that access a web server, the session tracking objects including identifications of web pages requested by the browsers as claimed. App. Br. 6-7; Reply Br. 3. Appellants add that Glance does not cure this deficiency, let alone analyze the identifications to determine the server's caching priorities as claimed. App. Br. 7-8; Reply Br. 6; Supp. Reply Br. 6.

Appellants also argue that the cited prior art does not teach or suggest HTTP session objects in claim 4 (App. Br. 11-12); periodically analyzing in claim 7 (App. Br. 12-13); ensuring the web site adapts to demand changes in claim 12 (App. Br. 14); determining whether an HTTP session object exists for one of the browsers in claim 15 (App. Br. 14-16); and writing into an HTTP session object that is associated with one of the browsers an identification of a requested web page in claim 16 (App. Br. 16).   The issues before us, then, are as follows:

ISSUES

Under § 103, has the Examiner erred by finding that Sarukkai and Glance collectively would have taught or suggested:

(1)(a) associating session tracking objects with browsers that access a web server, the session tracking objects including identifications of web

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[4] *But see* Supp. Ans. 4 (explaining why Sarukkai's tracing logs would include web page identifications).

pages requested by the browsers, and (b) analyzing the identifications to determine the server's caching priorities as recited in claim 1?

     (2) HTTP session objects as recited in claim 4?

     (3) periodically analyzing as recited in claim 7?

     (4) ensuring the web site adapts to demand changes as recited in claim 12?

     (5) determining whether an HTTP session object exists for one of the browsers as recited in claim 15?

     (6) writing into an HTTP session object that is associated with one of the browsers an identification of a requested web page as recited in claim 16?

FINDINGS OF FACT (FF)

     1. Sarukkai's system incorporates client "session depth" (i.e., the number of documents requested by the client in a current session) as a factor in an algorithm that dictates placing documents in file cache 34 coupled to proxy server 32 that are sent to clients. As shown in Figure 6, if the session is incomplete, another client document request is processed (steps 216 and 200). In one implementation, a document accessed early in a session is given a higher priority for being cached as compared to later-accessed documents. Sarukkai, col. 1, ll. 5-10; col. 4, ll. 33-35; col. 5, ll. 29-33; col. 8, ll. 29-53; Figs. 1, 6.

     2. Sarukkai's Figure 2 graphs document popularity for collected traces from the Hewlett-Packard Laboratories proxy on June 1, 1998. The traces are logs of client sessions on the Internet. Sarukkai, col. 3, l. 66 – col. 4, l. 5; Fig. 2.

3. Sarukkai discusses an article by Huberman in the context of viewing web surfing and document accesses from a client behavioural pattern perspective. Sarukkai notes that from the perspective of analyzing traces to determine the number of links followed in a client session, Huberman considers a session to be consecutive hits to the same server by the client. Analysis of these session lengths reveals a "Zipf distribution."[5] Sarukkai, col. 4, ll. 6-22.

4. A cookie-based scheme can be used in Sarukkai in which the proxy server sets the value of a cookie to signify that a client is in an ongoing session. The cookie's value identifies the depth of the current session. Sarukkai, col. 8, ll. 19-27.

5. Glance's system prioritizes documents in a proxy server's cache 24 by using value information from (1) "value module" 14 via statistical analysis of site visits from unique visitors ("implicit site recommendations"), and (2) "recommender system" 16 via user recommendations ("explicit URL recommendations"). Glance, Abstract; col. 4, l. 43 – col. 6, l. 41; Figs. 1, 4.

6. Glance's value module 14 analyzes the log of client (user 40) accesses to internet 30 web sites. The value module (1) extracts the number of unique visitors to a site, and (2) associates a percentile rating with each site. The value module then returns this percentile ranking as a measure of value of a site and/or any URL associated with the site. The proxy server stores URL addresses in cache 24 according to this percentile ranking. Glance, col. 5, ll. 43-54; Fig. 1.

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[5] Sarukkai refers to a paper that describes the Zipf distribution. Sarukkai, col. 3, ll. 55-58.

7. Glance's "Democratic Caching Policy" uses three equations that allow processor 22 to determine the priority of a URL that accounts not only for recency and frequency of access, but also its estimated value. Glance, col. 6, l. 43 – col. 7, l. 56; Fig. 2.

8. According to Appellants' Specification:

> HTTP session objects reside within memory of the server 130, and are associated with the browsers 110A through 110N by cookies, or, for browsers that do not support cookies, by URL rewriting. An HTTP session object may include a number of attributes, including a session ID that identifies the browser with which the session object is associated. More generally, the HTTP session objects enable session tracking, which is a mechanism through which the servlets 140A through 140M maintain information about the requests of the browsers 110 through 110N.

> Spec. 5:8-14.

ANALYSIS

Claims 1, 5, 6, and 8-11

Based on the record before us, we find no error in the Examiner's obviousness rejection of representative claim 1. Before assessing the merits of the rejection, however, we first address a procedural issue regarding the propriety of the Examiner's Supplemental Answer which is said to raise new arguments and present positions inconsistent with those indicated in the Answer. *See* Supp. Reply Br. 3-5. To the extent that Appellants' allegations challenge the Examiner's basis for the Supplemental Answer itself, such a

challenge is a petitionable matter—not an appealable matter—and is therefore not before us.[6,7]

Turning to the rejection, the dispute before hinges on the Examiner's interpretation of the recited "session tracking objects" which the Examiner equates to three alternative features from the cited prior art: (1) Sarukkai's tracing logs; (2) Sarukkai's cookies; or (3) Glance's "value module." Ans. 10-12.

Given the scope and breadth of the term "session tracking objects," we see no error in this interpretation despite Appellants' reliance on a related description in the Specification. *See* App. Br. 7; Reply Br. 3; Supp. Reply Br. 8. First, this description refers to particular *types* of session tracking objects, namely HTTP session objects. FF 8. While this description informs our understanding of HTTP session objects, it does not limit our interpretation of the broader "session tracking objects" which are not necessarily HTTP session objects. Claim differentiation principles alone evidence this fact: otherwise, dependent claim 4 (further limiting claim 1's "session tracking objects" to "HTTP session objects") would be superfluous to claim 1.[8]

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[6] *See* Manual of Patent Examining Procedure (MPEP), § 1207.05(I), 8th ed., Rev. 8, July 2010 ("An appellant who disagrees with an examiner's decision that a supplemental examiner's answer is permitted may petition for review of the decision under 37 CFR 1.181 within two months from the mailing of the supplemental examiner's answer.").

[7] *See* MPEP § 706.01 ("[T]he Board will not hear or decide issues pertaining to objections and formal matters which are not properly before the Board."); *see also* MPEP § 1201 ("The Board will not ordinarily hear a question that should be decided by the Director on petition . . . .").

[8] "The doctrine of claim differentiation creates a presumption that each claim in a patent has a different scope. . . . The difference in meaning and

In any event, we find that Sarukkai's priority-based caching scheme at least suggests associating session tracking objects with browsers as claimed, particularly since Sarukkai uses client "session depth" (i.e., the number of documents requested by the client in a current session) as a key factor in a caching algorithm. FF 1. Although Sarukkai places documents in cache according to this algorithm as Appellants indicate (App. Br. 6-7; Reply Br. 3), this priority-based placement is nonetheless based on client "session depth" which, as Sarukkai suggests, involves analyzing traces (i.e., logs of client sessions on the Internet). *See* FF 1-3. And Sarukkai at least suggests that this trace analysis can determine the number of links followed in a client session. *See id.* Accordingly, we find that Sarukkai at least suggests an association between (1) the server's "session tracking objects" used to perform this analysis, and (2) the clients' browsers that access those links. *See id.*

We reach a similar conclusion regarding Sarukkai's cookie-based scheme since the cookie's value identifies the depth of the current session for particular clients (FF 4)—a depth assessment that is based, at least in part, on analyzing traces (i.e., logs of client sessions on the Internet) which would involve session tracking objects as noted above.

Nor are we persuaded of error in the Examiner's reliance on Glance for teaching that the session tracking objects include requested web page identifications as claimed. Glance's system prioritizes documents in a proxy server's cache 24 by using value information from, among other things, a

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scope between claims is presumed to be significant to the extent that the absence of such difference in meaning and scope would make a claim superfluous." *Free Motion Fitness, Inc. v. Cybex Int'l, Inc.*, 423 F.3d 1343, 1351 (Fed. Cir. 2005) (internal quotation marks and citations omitted).

"value module" that statistically analyzes site visits from unique visitors via client access logs to provide "implicit site recommendations." FF 5. To this end, Glance's value module analyzes this tracking data, and ultimately returns a metric indicating the "value" of a site and/or *any URL associated with the site*. FF 6-7 (emphasis added). By their very nature, these URLs would identify the requested web pages associated with visits to the sites in Glance's system as the Examiner indicates (Ans. 12-15).

We are therefore not persuaded that the Examiner erred in rejecting representative claim 1, and claims 5, 6, and 8-11 not separately argued.

Claim 4

We will also sustain the Examiner's rejection of claim 4 calling for "HTTP session objects." Notably, Appellants' arguments (App. Br. 11-12) do not squarely address the Examiner's position which equates a server's HTTP session ID with the recited "HTTP session object." Ans. 21. This session ID is said to be well known and is assigned to a specific user for the duration of their session. *Id.*

We find no error in this interpretation, particularly since Appellants' Specification notes that an HTTP session object can include various attributes, including a session ID. FF 8. Moreover, since Sarukkai's caching scheme is based on session-based metrics and characteristics (e.g., "session depth") (*see* FF 1-4), we find no error in the Examiner's reliance on Sarukkai for at least suggesting that an HTTP session ID would be involved in determining the session-based factors in that caching scheme.

We are therefore not persuaded that the Examiner erred in rejecting claim 4.

Claim 7

We will also sustain the Examiner's rejection of claim 7. We see no reason why Sarukkai's analysis cannot be performed periodically as the Examiner indicates (Ans. 22), particularly since Sarukkai explains that if a session is incomplete, another client document request is processed involving caching as shown by the arrow looping back from step 216 to step 200 in Figure 6. FF 1. This successive determination involving session depth at least suggests a periodic analysis as claimed.

We are therefore not persuaded that the Examiner erred in rejecting claim 7.

Claim 12

We also sustain the Examiner's rejection of claim 12. As the Examiner indicates (Ans. 22-23), Sarukkai's caching technique, by its very nature, would ensure that web sites adapt to changes in demand. Indeed, Sarukkai is replete with references to document-demand-based factors including client "session depth" for caching determinations. *See* FF 1-4.

We are therefore not persuaded that the Examiner erred in rejecting claim 12.

Claims 15 and 18

We also sustain the Examiner's rejection of representative claim 15 essentially for reasons noted above regarding claim 4. Here again, the Examiner relies on a HTTP session ID as corresponding to the recited HTTP session object. Ans. 23-24. Since Sarukkai at least suggests monitoring a user's browser activity, and HTTP session IDs would be assigned in

connection with this activity as the Examiner indicates (Ans. 24; *see* FF 1-4), Sarukkai therefore would have at least suggested determining whether such an HTTP session object existed in connection with these sessions. That the session IDs ("objects") are assigned on a session-by-session basis as the Examiner indicates (Ans. 23-24) only bolsters this conclusion.

We are therefore not persuaded that the Examiner erred in rejecting claim 15, and claim 18 which recites commensurate limitations.

Claims 16 and 19

We also sustain the Examiner's rejection of representative claim 16 essentially for reasons noted above and those indicated by the Examiner (Ans. 24-25). We find no error in the Examiner's position that relies on the notion that cookies are *stamped* each time a link is established between the user and server. Ans. 25 (emphasis added). Nor have Appellants persuasively rebutted the Examiner's position that Sarukkai's cookies store the HTTP session ID and requested URL. *Id.* We therefore find no error in this position, particularly in view of Sarukkai's cookie-based scheme noted previously and the nature of cookies which would at least suggest writing into objects identifications of requested web pages as claimed. *See* FF 4.

We are therefore not persuaded that the Examiner erred in rejecting claim 16, and claim 19 which recites commensurate limitations.

THE REJECTION OVER SARUKKAI, GLANCE, AND RONALD

We also sustain the Examiner's obviousness rejection of claims 2 and 3 over Sarukkai, Glance, and Ronald (Ans. 7). Appellants did not present any arguments pertaining to this rejection, let alone particularly point out

errors in the Examiner's reasoning to overcome the Examiner's obviousness conclusion. *See* App. Br. 6-29. The rejection of claims 2 and 3 is therefore sustained.

THE REJECTION OVER SARUKKAI, GLANCE, AND KLOPP

Regarding claim 13, the Examiner cites Klopp to teach servlets, and combines this teaching with Sarukkai and Glance in concluding the claim would have been obvious. Ans. 7-8, 28-30. The Examiner takes a similar position regarding claims 14 and 17. Ans. 7-8, 30-34.

Appellants argue that the Examiner failed to explain why skilled artisans would be motivated to use Klopp's servlets in the Sarukkai/Glance arrangement. App. Br. 20. Appellants make similar arguments regarding claims 14 and 17. App. Br. 21-22. The issue before us, then, is as follows:

ISSUE

Under § 103, has the Examiner erred in rejecting claims 13, 14, and 17 by finding that Sarukkai, Glance, and Klopp collectively would have taught or suggested using servlets to (1) associate each user with a session tracking object, and (2) maintain information about browser requests? This issue turns on whether the Examiner's reason to combine the teachings of these references is supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion.

ADDITIONAL FINDINGS OF FACT

9. Klopp's system monitors HTTP transactions between a server and client, and includes (1) a server-side component 16 that collects data about

HTTP transactions on server 10, and (2) a client-side component 18 that displays the collected data. Klopp, Abstract; ¶ 0065; Fig. 1.

10. Data collected by data collector 15 is stored as one or more files in directory 20 on the server 10 and managed by the server-side component. Klopp, ¶ 0066; Fig. 1.

11. Directory 20 is maintained as part of a web module that includes a set of servlets that manage the directory. Servlets 25 (1) serve up data from files stored in the "current" and "save" subdirectories; (2) delete records corresponding to transactions; (3) move records up the "current" subdirectory to the "save" subdirectory; and (4) serve up a list of all current and saved transactions. Klopp, ¶ 0072; Fig. 1.

12. Client-side component 18 can receive notification of new HTTP transactions that are subsequently listed on GUI 22. This functionality is handled by a servlet 23 which runs on the internal HTTP server 12 and is called whenever the server-side component 16 records a new transaction. Klopp, ¶ 0068; Fig. 1.

13. A "servlet" is a Java program that runs exclusively in a server engine which is an extension to a web server. Klopp, ¶ 0037.

ANALYSIS

We will sustain the Examiner's rejection of claims 13, 14, and 17. We find no error in the Examiner's position (Ans. 28-34) that using servlets to (1) associate each user with a session tracking object, and (2) maintain information about browser requests would have been well within the level of skilled artisans and therefore an obvious enhancement to the Sarukkai/Glance server-based caching system. In this regard, we see no

reason why Java-based servlets (FF 13) could not be used in this manner as the Examiner proposes, particularly in view of Klopp's use of servlets for (1) managing and retrieving data pertaining to HTTP transactions (FF 9-11), and (2) receiving and listing new HTTP transactions on a GUI (FF 12).

In short, we find that using servlets to achieve the recited functionality as the Examiner proposes in the Sarukkai/Glance system is tantamount to the predictable use of prior art elements according to their established functions. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007). We therefore find the Examiner's reason to combine the teachings of the cited references supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion.

We are therefore not persuaded that the Examiner erred in rejecting claims 13, 14, and 17.

THE REJECTION OVER ASAI, KNOUSE, AND GLANCE

Regarding claim 20, the Examiner finds that Asai discloses a method for adapting to changes in demand on a web server with every recited feature except for (1) creating an HTTP session object if none exists, and (2) altering a server cache responsive to caching priorities as claimed. The Examiner, however, cites Knouse to cure deficiency (1) and Glance to cure deficiency (2) in concluding the claim would have been obvious. Ans. 8-10, 34-35. In reaching this conclusion, the Examiner does not give the preamble of claim 20 patentable weight. Ans. 34.

Appellants argue that the cited prior art does not teach or suggest a method for adapting to change in demand on a web server including associating session tracking objects with browsers that access a web server,

much less that the session tracking objects include identifications of requested web pages, where the identifications are analyzed to determine caching priorities as claimed. App. Br. 21-28. Appellants also argue that the cited prior art does not teach or suggest creating an HTTP session object for the browser if such an object does not exist. App. Br. 26-28. Appellants add that the preamble of claim 20 must be given patentable weight since the claim's body is said to "breathe[] life and meaning into the claim preamble." Reply Br. 8. Lastly, Appellants argue that there is no motivation to combine the references as proposed. App. Br. 28-29. The issues before us, then, are as follows:

ISSUES

(1) Under § 103, has the Examiner erred by finding that Asai, Knouse and Glance collectively would have taught or suggested:

(a) a method for adapting to change in demand on a web server including associating session tracking objects with browsers that access a web server, where the session tracking objects include identifications of requested web pages, where the identifications are analyzed to determine caching priorities, and (b) creating an HTTP session object for the browser if such an object does not exist?

(2) Did the Examiner err in not giving the preamble of claim 20 patentable weight?

(3) Is the Examiner's reason to combine the teachings of Asai, Knouse, and Glance supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion?

ADDITIONAL FINDINGS OF FACT

14. Asai's cluster server apparatus 10 continuously distributes streaming data (e.g., video data) to terminals 4_1 to 4_m while the loads among cache servers 10_1 to 10_n are optimally distributed. Specifically, upon receiving requests from the terminals, cluster control unit 21 transfers requests to the cache servers to distribute their load based on information from (1) session management units 11_1 to 11_n, and (2) streaming data management units 14_1 to 14_n. Asai, Abstract; col. 1, ll. 6-10; col. 12, ll. 5-48; Fig. 1.

15. The session management units hold the number of distribution streams of the cache servers using session management tables 53_1 to 53_8. Asai, col. 19, ll. 1-42; Fig. 9.

16. Figure 10 shows session management tables 53_2 and 53_3 including (1) a session identifier for identifying the session, and (2) a packet identifier indicating a packet most recently sent out are registered. Data distribution units 12_1 to 12_m transmit to the terminal only streaming data with respect to a session with a session identifier equal to or smaller than the table boundary value. Asai, col. 19, l. 51 – col. 20, l. 40; Fig. 10.

17. Knouse provides an application program interface for an access system that enables an application without a web agent front end to use contents of an existing cookie to provide access system services. Knouse, ¶ 0014.

18. In one implementation, user session state information is encrypted and stored as a cookie. Knouse, ¶ 0016.

19. Knouse's form authentication sets a "form login" cookie on browser 12 which includes the URL of the requested resource. Knouse, para 0217; Fig. 34.

20. Knouse notes that a user session object can be constructed from a valid session token, and a session token can be generated from a user session object. Elements of a user session object include the user identity, location of the user's client (DNS hostname or IP address), level of authentication scheme, session status, etc. Knouse, ¶¶ 0308-16, 0331-35; Figs. 59-60.

21. Knouse notes that a set of pseudo code is a servlet fragment that gets a session token from a cookie and determines if the user is authorized to access a requested URL. Knouse, ¶ 0352.

PRINCIPLES OF LAW

In general, a preamble limits the invention if it recites essential structure or step, or if it is "necessary to give life, meaning, and vitality" to the claim. . . . Conversely, a preamble is not limiting "where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention." *Catalina Marketing Int'l, Inc. v. Coolsavings.com, Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002) (citations omitted). *See also Rowe v. Dror*, 112 F.3d 473, 478 (Fed. Cir. 1997) (noting that when the claim preamble recites structural limitations of the claimed invention, the USPTO must give effect to that usage).

If the preamble merely duplicates limitations in the body of the claim, it is not a separate limitation. *Am. Med. Sys., Inc. v. Biolitec, Inc.*, No. 2009-1323, slip op. at 9 (Fed. Cir. Sept. 13, 2010) (citations omitted). For

example, a preamble that "merely gives a descriptive name to the set of limitations in the body of the claim that has completely set forth the invention" has no separate limiting effect. *Id.* (citations and internal quotation marks omitted).

ANALYSIS

We begin by noting that a key point of dispute is whether the Examiner erred in not giving the preamble of claim 20 patentable weight. In this regard, Appellants point to the claim's last clause which is said to "breathe[] life and meaning into the claim preamble." Reply Br. 8.

But where, as here, the preamble merely duplicates limitations in the body of the claim, it is not a separate limitation. *Am. Med. Sys.*, slip op. at 9. The preamble recites "[a] method for adapting to change in a demand on a web *server*," and the last clause merely restates this desired result, albeit with slightly different language: "wherein the method ensures that a web *site* adapts to changes in demand" (emphases added). Although the two clauses differ in using the terms "server" and "site," respectively, we fail to see a meaningful distinction between the interpretation of these terms, at least to the extent that the last clause somehow "breathes life and meaning" into the preamble as Appellants assert.

When considering claim 20 as a whole, we find the claim body defines a structurally complete invention, and the preamble merely recites a desired result of the method, namely adapting to change in demand on a web server. As such, the preamble has no limiting effect. *See Catalina Marketing*, 289 F.3d at 808. *Accord Am. Med. Sys.*, slip op. at 9. We are

therefore not persuaded that the Examiner erred in not giving the preamble of claim 20 patentable weight.[9]

Nevertheless, we are persuaded of error in the Examiner's rejection of claim 20. As Appellants indicate (App. Br. 23-28), the Examiner's basis for rejecting the disputed limitations based on Asai's disclosure (Ans. 8-10) is not a model of clarity. Specifically, we find problematic the Examiner's somewhat general reference to various disclosures of Asai in connection with (1) determining whether HTTP session objects exist for browsers; (2) associating session tracking objects with browsers that access a web server which includes servlets, caching algorithm, and fast memory cache, where the session tracking objects include identifications of requested web pages; and (3) analyzing the web page identifications to determine caching priorities. *See* Ans. 8-9. Apart from merely citing certain passages and figures from Asai, the Examiner does not adequately explain how or why these disclosures specifically teach or suggest the limitations noted above. We are therefore left to speculate as to exactly how the Examiner intended to map Asai's disclosure to the disputed limitations of claim 20—an exercise which we decline to undertake in the first instance on appeal.

That said, Asai's system does involve optimally distributing streams to terminals from plural caching servers via session management units which utilize session management tables—tables which identify particular sessions. FF 14-16. But we fail to see—nor has the Examiner shown—how this system uses HTTP or browsers at all, let alone that it determines whether HTTP session objects exist for browsers as the Examiner alleges. Ans. 8.

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[9] *But see* Ans. 8-9 (mapping the preamble and the last clause of claim 20 to col. 2, lines 19-25 of Knouse).

Notably, the Examiner appears to shift positions from the rejection to the Response to Arguments section of the Answer regarding associating session tracking objects with browsers that access a web server. *Compare* Ans. 8 (mapping various disclosures from Asai for this limitation) *with* Ans. 35 (referring to Glance and Knouse for this feature). In any event, while we can see how Knouse would at least suggest some form of "session tracking object" association, at least in the context of a cookie-based authentication procedure for browsers as part of an application program interface for an access system (*see* FF 17-21), the Examiner has still failed to explain how or why this functionality would be applied to the streaming system of Asai. Nor will we speculate in this regard in the first instance on appeal. We reach a similar conclusion regarding Glance's disclosure regarding its applicability to Asai. *See* FF 5-17. On this record, we therefore find the Examiner's combining the teachings of Asai, Knouse, and Glance is not supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion.

We are therefore persuaded that the Examiner erred in rejecting claim 20.

CONCLUSION

Under § 103, the Examiner did not err in rejecting claims 1-19, but erred in rejecting claim 20.

ORDER

The Examiner's decision rejecting claims 1-20 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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